

REMARKS/ARGUMENTS

35 USC § 102(b)

Claim 21 was rejected under 35 USC § 102(b) as being anticipated by Wu (U.S. Pat. No. 6,467,109). In his reasoned response, the office seems to argue that Wu's stand would be able to perform the claimed function upon unlocking. The applicant disagrees for various reasons:

First, the previous claims expressly *required the cross brace to synchronize a movement*. This limitation was and is not met as the cross brace must be released from one side of Wu's frame as the examiner properly recognized. Nevertheless, the applicant amended claim 21 to even more clearly point out that the cross brace remains coupled to both the legs and support rods as the hammock stand is being collapsed, which would render Wu's stand non-collapsible.

Second, the examiner noted that the claim would include an intended use. Thus is not the case as the claim included a *structure defined by a functional limitation*. A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). The office is reminded that there is nothing wrong with defining some part of an invention in functional terms. *Functional language does not, in and of itself, render a claim improper*. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step (e.g., Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc., 381 F.3d 1111, 1117-20, 72 USPQ2d 1001, 1006-08 (Fed. Cir. 2004)). The amended claim 21 spells out such functional limitation and even more clearly distinguishes over Wu.

35 USC § 103

Claims 1-3 and 6-10 were rejected under 35 USC § 103 as being obvious over Wu in view of Bien (U.S. Pat. No. 3,464,069). The applicant disagrees, especially in view of the amendment herein.

As pointed out above, *Wu's device would be rendered non-collapsible if the cross brace would remain coupled as expressly required by the claims*. With respect to the structure defined via function limitation, the same arguments as above apply. Bien does not remedy these defects.

Therefore, claims 1-3 and 6-10 should not be deemed obvious over the cited references.

In view of the present amendments and arguments, the applicant believes that all claims are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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